The Academic
International Journal of Multidisciplinary Research

An Online Peer Reviewed / Refereed Journal
Volume 4 | Issue 6 | June 2026
ISSN: 2583-973X (Online), SJIF IF(2026): 5.6
Website: www.theacademic.in

Reproductive Justice or Exploitation? A Critical Socio-Legal Analysis of Surrogacy and Its Impact on Poor Women in India

Ms. Kiran Bala

Assistant Professor, Rayat College of Law, Railmajra

DOI : https://doi.org/10.5281/zenodo.21389666

ARTICLE DETAILS

Research Paper

Received: 15-05-2026

Accepted: 24-06-2026

Published: 15-07-2026

Keywords:

Surrogacy, Reproductive Justice, Assisted Reproductive Technology (ART), Reproductive Autonomy, Women's Rights, Constitutional Law, Public Health, India.

ABSTRACT

The introduction of assisted reproductive technologies (ART), specifically surrogacy, has evolved into a medico-legal and socio-economic establishment. Due to low medical costs and lack of restrictions, India was once a place renowned for commercial surrogacy. Concerns such as the exploitation of surrogate mothers, the commodification of the female body, a lack of informed consent, and reproductive inequalities arose from this practice. To combat this, the Surrogacy (Regulation) Act, 2021 was passed to prohibit commercial surrogacy and allow for the altruistic practice of surrogacy. The Act brings to question issues surrounding the constitution, reproductive autonomy, equality, dignity, and occupational freedom. By using a socio-legal and doctrinal approach and analyzing various statutes, case law, arguments from feminist authors, and public health perspectives, this paper argues that a total ban on commercial surrogacy does not address the deep-rooted inequalities faced by women who are economically oppressed and proposes a regulatory model that safeguards autonomy and dignity.

1. Introduction:

The family has traditionally been seen as the cornerstone of society, tied to human dignity, the continuity of generations, and individual identity. The act of reproduction is a natural element of human existence and has

traditionally been framed within the context of marriage and family ties. But, advancements in medicine and biotechnology have radically transformed this landscape. Assisted reproductive technologies ("ART"), especially surrogacy, have shifted the perception of motherhood, parenthood, and family structures by allowing those who cannot biologically conceive to parent through medical means.

Surrogacy is an arrangement in which a woman agrees to have a child for the use of other parent(s), either via traditional or gestational surrogacy. In gestational surrogacy, the surrogate mother does not have a genetic link to the child, as the embryo is formed through IVF using the eggs and sperm of the intended parents or donors. Subsequently, surrogacy shifted from intimate fertility efforts to a transnational, commodified chain involving fertility clinics, contract mediators, legal documentation, and medical travel.

India became a hub for commercial surrogacy in the early 2000s. The low cost of procedures, lack of legislation, proficient medical staff, and pervasive socio-economic disparities contributed to a thriving reproductive industry. A large number of foreign intending parents traveled to India for surrogacy arrangements due to the significantly lower cost of surrogacy compared to that in Western countries. This made India, according to many scholars, the “surrogacy capital of the world.”

The burgeoning industry of commercial surrogacy gave rise to several ethical and legal concerns. Critics, predominantly from feminist and human rights circles, argued that surrogacy on a commercial level confined vulnerable women as mere vessels for the reproduction of the privileged class, creating and sustaining a market for surrogacy. Allegations of exploitative surrogacy contracts, health issues, the confinement of surrogate mothers, and unawareness raised several voices demanding interventions from the state. Plus, constitutional experts argued that the state’s ban on the commodification of surrogacy and the consequent implementation of restrictive laws propelled a violation of the fundamental rights of surrogate mothers. The translation of the Surrogacy (Regulation) Act, 2021 was a legislative effort to address prevailing issues surrounding surrogacy through a ban on commercial surrogacy and a consequent opening towards altruistic surrogacy.

Although the legislation aimed to prevent exploitation and commodification, critics say that it takes a paternalistic approach. They believe it doesn’t effectively address the real issues of poverty, gender inequality, and reproductive labor. The ban on compensation may not stop exploitation; instead, it could drive surrogacy underground and into unregulated areas. This paper looks closely at the social and legal aspects of surrogacy in India, focusing on its effect on poor women. It questions whether the current rules support reproductive justice or continue structural exploitation through a moralistic legal mindset. The paper also examines constitutional principles, judicial changes, public health effects, feminist views, and

international comparisons. It aims to suggest a balanced approach to surrogacy regulation that protects rights.

2. Evolution of Surrogacy and India's Emergence as a Global Hub:

Infertility has become a major public health issue worldwide. Factors like later marriages, changing lifestyles, environmental pressures, reproductive disorders, and falling fertility rates have increased the need for assisted reproductive technologies. As medical science advanced, IVF and gestational surrogacy became alternative options for individuals and couples facing infertility.

India quickly emerged as a popular destination for surrogacy due to several factors. First, the cost of surrogacy in India is much lower than in Western countries. Second, India has a solid medical infrastructure and skilled fertility specialists. Third, before 2021, the lack of strict laws allowed fertility clinics to operate with little legal oversight.

The growth of reproductive tourism led to a structured market involving fertility clinics, legal intermediaries, agents, surrogate hostels, and international clients. While this industry created economic opportunities, especially for poor women, it also heightened concerns about exploitation and regulation. Reports surfaced about inadequate healthcare protections, coercive contracts, lack of independent legal advice, unnecessary cesarean sections, and the confinement of surrogate mothers in monitored hostels.

Commercial surrogacy also brought to light significant legal uncertainties around citizenship, nationality, parentage, guardianship, and the enforceability of contracts in cross-border cases. These issues eventually led to judicial involvement and changes in the law.

3. Socio-Economic Profile of Surrogate Mothers in India:

Research shows that most surrogate mothers in India come from economically disadvantaged backgrounds, often struggling with low income, limited education, unstable jobs, and little social mobility. Many women choose surrogacy as a way to pay off debts, support their children's education, secure housing, or improve their household finances.

For many, the payment from surrogacy can equal several years of regular work income. This makes surrogacy seem like a way to achieve economic mobility and independence. However, we must critically assess the voluntariness of this choice within the context of broader structural inequality.

Poverty, gender bias, limited job opportunities, and patriarchal social systems greatly limit women's ability to negotiate. Contracts are often created by fertility clinics or commissioning parents, leaving surrogate mothers with little power to negotiate terms related to healthcare, pay, insurance, or support after pregnancy. This creates an imbalance and reinforces dependency.

Institutional practices complicate the idea of autonomy. Ethnographic studies show that many surrogate mothers are sent to hostels where their movements, diets, medical routines, and social interactions are closely monitored. These conditions turn reproductive labor into a highly controlled form of service governed by medical and commercial interests.

While surrogacy may offer short-term financial gains, the surrounding socio-economic realities raise important questions about genuine consent, dignity, and exploitation.

4. Judicial Approach to Surrogacy: Case Law Analysis:

A. Baby Manji Yamada v. Union of India

The Supreme Court's decision in Baby Manji Yamada v. Union of India was one of the first times the courts dealt with cross-border surrogacy in India. The case involved a Japanese couple that arranged surrogacy in India but divorced before the child was born. This raised questions about custody, nationality, and guardianship.

While the Court did not directly rule on the legality of commercial surrogacy, it recognized the practice and stressed the need for legislative regulation. The case brought attention to legal issues regarding citizenship and the welfare of children born through international surrogacy arrangements.

B. Jan Balaz v. Anand Municipality

In Jan Balaz v. Anand Municipality, the Gujarat High Court addressed issues about the nationality and parentage of twins born through surrogacy to German parents. The Court decided that the children were entitled to Indian passports because they were born to an Indian surrogate mother. The judgment revealed significant gaps in nationality laws and showed how conflicting international legal systems can leave children born through surrogacy in a state of legal uncertainty or without a nationality.

C. Suchita Srivastava v. Chandigarh Administration

In Suchita Srivastava v. Chandigarh Administration, the Supreme Court recognized reproductive autonomy as a key part of personal liberty under Article 21 of the Constitution. The Court stated that reproductive choices are essential to bodily integrity and personal decision-making.

While the case did not explicitly address surrogacy, its constitutional reasoning has a significant impact on current discussions about reproductive freedom and state control over reproductive choices.

D. Justice K.S. Puttaswamy v. Union of India

The recognition of reproductive autonomy got a stronger constitutional basis in Justice K.S. Puttaswamy v. Union of India. In this case, the Supreme Court declared privacy as a fundamental right under Article 21. The ruling connected privacy with dignity, bodily autonomy, and the freedom to make choices.

Reproductive decisions, including involvement in surrogacy, are part of this protected constitutional area. Therefore, excessive state interference in reproductive choices could be constitutionally questionable.

E. Arun Muthuvel v. Union of India

In Arun Muthuvel v. Union of India, the Supreme Court offered a more purposeful interpretation of surrogacy laws. It relaxed some statutory requirements while stressing the importance of the intent to parent. This judgment showed that strict statutory rules might undermine reproductive rights and the ability to form families.

5. Constitutional Challenges to the Surrogacy (Regulation) Act, 2021:

The constitutional validity of the Surrogacy (Regulation) Act, 2021 is still hotly debated.

A. Article 14: Equality and Non-Discrimination

By excluding single individuals, unmarried couples, and LGBTQ+ persons from eligibility criteria, the Act may violate Article 14 of the Constitution. The classifications made by the Act could be seen as arbitrary and inconsistent with the evolving understanding of constitutional law that recognizes various family structures.

B. Article 19(1)(g): Occupational Freedom

The ban on compensation raises significant concerns about occupational freedom under Article 19(1)(g). If reproductive labor is a valid form of work, a total ban on compensation might be an unreasonable restriction on livelihood and economic independence.

C. Article 21: Privacy, Dignity, and Reproductive Autonomy

The restrictions set by the law may also violate the reproductive autonomy protected by Article 21. Legal precedents increasingly acknowledge that reproductive choices, bodily integrity, and family formation fall under personal liberty and dignity.

D. Doctrine of Proportionality

The doctrine of proportionality states that restrictions on fundamental rights must seek valid goals using the least restrictive methods available. Critics argue that a full ban on commercial surrogacy is disproportionate since less restrictive options, like regulated compensated surrogacy, could prevent exploitation while still protecting autonomy.

6. International comparative approaches:

Jurisdictions around the world are dealing with surrogacy in a variety of ways.

In the UK, there is an acceptance of altruistic surrogacy, while the Surrogacy Arrangements Act 1985 bans the prospect of commercial profit. A parental order, transferring legal parentage to intended parents, may be made by the courts once the child has been born.

In contrast the USA takes a 'disparate' approach, as surrogacy laws are determined state by state. California allows gestational surrogacy agreements and prioritises contractual autonomy and enforceability of contracts above all else. States outside of this have been found to impose bans and restrictions.

These comparative approaches show that it is possible to operate a regulatory regime instead of an outright ban that takes into account the protection of surrogate mother and child.

7. Reproductive Justice or Reproductive Exploitation? A Critical Approach:

The central issue at the heart of discussions of surrogacy is whether surrogacy represents a mechanism for reproductive freedom or reproductive exploitation.

Those who argue in favour of surrogacy rights do so based on the belief that women should have control over their bodies and the reproductive and economic choices that can be made about them. Compensation is seen by proponents as a way of empowering women from poor socio economic backgrounds; it may be used to help them improve their socio-economic position, to finance their children's education or repay loans and

find adequate housing. Denying women the right to use their reproductive capacity to earn a wage can be viewed as a paternalistic attitude.

However, 'real autonomy cannot be studied in isolation from structural inequality'. Choices made in circumstances of poverty, unemployment and discrimination on the grounds of gender, cannot be considered truly free choices. Wealthy commissioning parents and commercial fertility clinics have significantly more bargaining power compared to the surrogates who tend to be financially deprived.

The altruistic framework enshrined within the Surrogacy (Regulation) Act 2021 cannot eradicate exploitation as the exploitation is not solely dependent on monetary exchange but is linked with structural inequalities. While prohibiting surrogacy payments, this legislation retains the market demand and may give rise to an unregulated market and "grey area".

Thus the empowerment versus exploitation debate does not take place within a vacuum; it exists along a spectrum informed by Socio economic issues, legal framework, healthcare safeguards, bargaining position, rights etc.

8. Suggestions:

A. Recognition of Reproductive labor

Reproductive labor must be treated as legitimate labor under the law and given appropriate compensation. Regulation should be by statutory standards and not by the market.

B. Mandated standardized contracts.

All surrogacy agreements must be made under state regulated agreements that define, at a minimum, the healthcare obligations, compensation (which must not be a commercial one), health insurance, conflict resolution mechanisms, and post pregnancy care of surrogates.

C. Independent legal and psychiatric counseling.

Independent legal advice and counseling should be mandatory for surrogates before any surrogacy agreements are made. Psychiatric counseling should also be mandatory.

D. Ensuring of long-term health care.

The state should mandate long-term health care benefits for surrogates-prenatal, postnatal, mental health and long-term health insurance coverage.

E. Widening of eligibility criterion.

The exclusion of unmarried women, LGB T + individuals from surrogacy should be reassessed as it is a violation of the constitution in terms of equality and human dignity.

F. Institutional regulations.

The national/state surrogacy boards should be granted stronger monitoring, compliance and regulatory power over fertility clinics.

G. Socio-economic welfare measures.

At the state level the socio-economic problem of poverty, unemployment and gender inequality should be addressed by the state through various welfare schemes and provisions of employment and skill development programs.

9. Conclusion:

Surrogacy in India has been a product of complex interactions between constitutional rights, medical technology, biomedical ethics, the political economy and gender equality. In a bid to curb exploitation and commodification of surrogacy, the Surrogacy (Regulation) Act, 2021 shifted from a commercial to a completely altruistic model of surrogacy. However, the statute adopted a prohibitionist and paternalist stance and failed to engage with the structural realities that influence women's reproductive choices. While prohibiting compensation does not necessarily stop exploitation but, in effect, renders it invisible or redirects it to the unregulated market, a completely unregulated market poses serious concerns of commodification, health care abuse and contractual exploitation. A constitutionally balanced approach needs to be formulated where a via-media is created between prohibition and commercialization. A surrogate must not be a passive victim or a biological machine, but a woman entitled to rights, human dignity, equality, healthcare, informed consent, economic autonomy and legal protection. After all, women in the economically backward sections of society can only exercise their reproductive choices, when their reproductive capacities are not rendered solely a means of livelihood and are accompanied with adequate welfare measures, opportunities for employment, training and all other factors that influence choices in a fair and ethical manner. Only when an altruistic yet constitutionally sound and socioeconomically sensitive framework is formed can the dignity and rights of women be protected.

Refrences:

[1] John A. Robertson, *Children of Choice: Freedom and the New Reproductive Technologies* 67 (1994).

[1] P.K. Gupta, *Artificial Reproductive Techniques and Law* 45 (2012).

[1] Sama‑Res. Grp. for Women & Health, *Birthing a Market: A Study on Commercial Surrogacy* (2012).

[1] I. Glenn Cohen, *Patients with Passports: Medical Tourism, Law, and Ethics* 123 (2015).

[1] Amrita Pande, Commercial Surrogacy in India: Manufacturing a Perfect Mother‑Worker, 35 *Signs J. Women Culture & Soc'y* 969 (2010).

[1] Debra Satz, *Why Some Things Should Not Be for Sale* 98 (2010).

[1] Pande, supra note 5.

[1] The Surrogacy (Regulation) Act, 2021, No. 47 of 2021, India Code.

[1] Sama‑Res. Grp. for Women & Health, supra note 3.

[1] UNFPA, *State of World Population Report* (2018).

[1] Cohen, supra note 5.

[1] Indian Council of Med. Research, *National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India* (2005).

[1] Pande, supra note 10.

[1] Id. at 89–95.

[1] Sama‑Res. Grp. for Women & Health, supra note 3.

[1] Id

[1] Satz, supra note 6.

[1] Pande, supra note 11, at 112.

[1] Id.

[1] Baby Manji Yamada v. Union of India, (2008) 13 S.C.C. 518 (India).

[1] Jan Balaz v. Anand Municipality, A.I.R. 2010 Guj. 21 (India).

[1] Suchita Srivastava v. Chandigarh Admin., (2009) 9 S.C.C. 1 (India).

[1] Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

[1] Arun Muthuvel v. Union of India, 2023 S.C.C. Online S.C. 100 (India).

[1] INDIA CONST. art. 14.

[1] INDIA CONST. art. 19, cl. 1(g).

[1] INDIA CONST. art. 21.

[1] Modern Dental Coll. & Research Ctr. v. State of M.P., (2016) 7 S.C.C. 353 (India).

[1] Surrogacy Arrangements Act 1985, c. 49 (U.K.).

[1] Johnson v. Calvert, 851 P.2d 776 (Cal. 1993).

[1] Cohen, supra note 4.

[1] Pande, supra note 10.

[1] Satz, supra note 6.